IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 6228 OF 2005
(Leave to file an Appeal)
IN
CRIMINAL APPEAL NO. OF 2005

The State of Maharashtra .....Applicant
(Orig. Complainant)

V/s

Deodutta Damodar Padhye
Age about 31 yrs.
Occupation - Medical Practitioner,
Aundh Pune. .....Respondent.
---- (Orig. Accused)

Mr. Y.M. Nakhwa, APP for the State.

Mr. Nitin Jamdar for the Respondent.

CORAM: V.M. KANADE, J.
DATE : 24th August, 2007

P.C.:

1. Heard the learned Counsel appearing on behalf of the applicant - State and the learned Counsel appearing on behalf of the respondent.

2. Applicant - State has preferred this application for leave to file an appeal against the Judgment and Order passed by the Special Judge, Pune whereby the Trial Court was pleased to acquit the accused of the offence punishable under sections 7, 13(1)(d) and 13

(2) of the Prevention of Corruption Act.

3. It is the case of prosecution that one Nitin Borhade had pain in his stomach and, therefore, he went to the Rural Hospital at Narayangaon and he contacted the accused who examined him and told him that operation would have to be performed and, for that purpose, he demanded Rs 2,500/-. The respondent - accused was working as a Medical Officer in the said Rural Health Centre since 07/08/2001. It is the case of prosecution that the complainant was also asked to get report of Sonography and Pathology report from the Private Hospital before the Appendix operation could be performed.

4. The complainant filed complaint with the Anti Corruption Bureau and, accordingly, pre-trap panchanama was made and, thereafter, raiding party went to the hospital alongwith the tainted amount. It is the case of prosecution that the complainant and Panch No.1 contacted the accused in Rural Hospital and that the accused demanded bribe amount of Rs 2,500/-. The complainant paid the said amount and gave red signal to the raiding party and the accused was caught red-handed with smeared notes which were recovered from his pants' pocket. A detailed post-trap panchanama was made and, thereafter, a complaint was lodged at Narayangaon Police Station. A charge-sheet was filed against respondent - accused.

5. The prosecution examined four witnesses viz complainant - Nitin Borhade (P.W.1), Panch witness Shivaji (P.W.2), Sanctioning Authority - Deputy Secretary, Health Department Shri Pradhan

(P.W.3) and Investigating Officer P.I. Pinjan (P.W.4). The Trial Court acquitted the accused on the ground that the prosecution failed to establish theory of demand of bribe for illegal gratification by accused from Nitin Borhade - complainant. The Trial Court held that the Sanctioning Authority also was not competent to grant sanction since it was not the appointing authority. The Trial Court, therefore, acquitted the said accused.

6. The learned APP appearing on behalf of the applicant - State has taken me through the notes of evidence and the judgment and order of the Trial Court. It is submitted that acceptance of money had been established by the prosecution and that the accused was caught red-handed and that the money was found in his pants' pocket which was smeared with anthrancene powder. He submitted that the complaint was duly lodged after demand of bribe was made by the accused for performing Appendix operation and the complainant has stated in his evidence that after the accused had asked him whether he had done his work, he thereupon paid the said amount to the accused. He submitted that the Trial Court, therefore, has clearly erred in holding that the demand was not established by the prosecution.

7. I have given my anxious consideration to the submissions made by the learned Counsel appearing for the applicant - State and the learned Counsel appearing on behalf of the respondent. The record and proceedings were called for and I have examined the notes of evidence and I have gone through the judgment and order of the Trial Court. It is well settled principle in law that if two views are possible

and the Trial Court takes a view and acquits the accused then, unless the finding is found to be perverse or unless the finding is not based on the oral and documentary evidence which is brought on record, the High Court, while acting in its jurisdiction under section 378 of the Code of Criminal Procedure, is normally not expected to interfere with the said finding which is recorded by the Trial Court by taking a contrary view.

8. In the present case, the respondent - accused was working as a Rural Health Officer which has come on record and a specific defence has been taken by the respondent - accused that he had asked the complainant to purchase certain medicines and to perform certain tests in the Private Hospital and when the complainant had expressed his inability to purchase the said medicines, he had shown his willingness to purchase the said medicines and, for that purpose, the complainant had paid the said amount to the accused. It has also come on record that at the time of handing over of the cash by the complainant to the accused, the prescription which was given by the accused to the complainant was also handed over. It is further admitted that this prescription does not form part of pre-trap panchanama. Thus, normally, when pre-trap panchanama is prepared, all articles which are in possession of the complainant are noted in the panchanama. No explanation has been given by the prosecution as to how this prescription which was admittedly given by the complainant to the accused at the time of handing over cash of Rs 2,500/- remained to be mentioned in the pre-trap panchanama. Further, it is an admitted position that this prescription was later on

found on the person of the accused when the raid was conducted. The Trial Court has, after noticing these facts, has observed that the explanation given by the accused in his statement under section 313 of the Cr.P.C regarding the reason for acceptance of the amount from the complainant appears to be probable and has accepted his explanation. Further, from the evidence, it can be seen that neither the complainant nor the Panch in his evidence has stated that the accused had demanded an amount of Rs 2,500/- towards illegal gratification. That being the position, in my view, Trial Court was justified in coming to the conclusion that the theory of demand, as propounded by the prosecution, was not established beyond a reasonable doubt. It is well settled position in law that in order to constitute an offence punishable under section 7 and 13(1)(d) and 13 (2) of the Prevention of Corruption Act, it has to be first established that the demand of bribe is made towards the illegal gratification for performing official duty. Mere acceptance of money, by itself does not establish commission of the aforesaid offence. In the present case, therefore, the prosecution having miserably failed in establishing the demand by the accused for bribe, the Trial Court, in my view, was justified in holding that the offence was not established by the prosecution. The Trial Court also has noticed that the person who had granted sanction to prosecute viz Deputy Secretary Mr. Pradhan was working as Joint Secretary and that he belonged to non-IAS Cadre and, therefore, could not have been promoted as Secretary. The said witness, in his deposition, has admitted that the Deputy Secretary was not authorized to remove the Medical Officer from service. In view of this admission given by the Deputy Secretary Mr.

Pradhan, it is obvious that the sanction order is clearly illegal. Thus, no case is made out for granting leave in the present case. Leave to file appeal is refused. Application is accordingly dismissed.

(V.M. KANADE, J.)